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IN THE

# Supreme Court of the United States

October Term, [redacted] 1969

Docket No. 363

In The Matter
of
LAWRENCE S. INGOGLIA,
*Petitioner,*
against
HAROLD M. SPITZER,
*Respondent.*

## BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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### Statement

This brief is submitted in opposition to Petitioner's application for a writ of certiorari to this Court asking for a review, on constitutional grounds, of the decision of the Court of Appeals of the State of New York dated April 10, 1969 affirming an Order of Disbarment of the Appellate Division, Supreme Court of the State of New York, Second Department (30 A.D. 2d 921).

## Question Presented

**Is petitioner's testimony given under a grant of immunity at a criminal trial admissible against him in subsequent disciplinary proceedings.**

The law is well settled that such testimony is admissible in disciplinary proceedings.

## POINT I

**Petitioner's challenge to the admissibility of a transcript of his criminal testimony in a disciplinary proceeding should be rejected.**

The evidence in this disciplinary proceeding consists of sworn testimony of two witnesses and exhibits, together with a transcript of testimony given by Petitioner Lawrence S. Ingoglia in a criminal trial, People of the State of New York v. Leland S. Beck and Anthony J. Meli, at which trial Petitioner testified under a grant of immunity.

Petitioner contends that the introduction of his testimony given by him at the criminal trial of People of the State of New York v. Leland S. Beck and Anthony J. Meli violates his privilege against self-incrimination, in that the immunity granted him during the course of the trial and under which this testimony was given, protects him from its use against him in a disciplinary action.

We submit that the law is well settled to the contrary. This precise issue was long ago decided in *Matter of Rouss*, 221 N.Y. 81, and continues to be the law in this State today. (See also *Zuckerman v. Greason*, 20 N.Y. 2d 430, cert. denied 88 S.Ct. 856; *Matter of Farrel*, 20 N.Y. 2d 861; *Matter or Ungar*, 27 A.D. 2d 925, leave to appeal denied 20 N.Y. 2d 642, cert. denied 389 U.S. 1007; *Matter of Klebanoff*, 21 N.Y. 2d 920, cert. denied 37 LW 3120.)

The Petitioner further argues that *Matter of Rouss* should be re-examined in the light of substantive changes in the law made by the Legislature when it amended the immunity statutes to include the words "penalties and forfeitures". He contends that Judge Cardozo overlooked the significance of these words in his decision. We submit, however, that a review of the decision, at page 87 thereof, will indicate that Judge Cardozo did not overlook these principles but specifically defined them by stating:

> "*** Penalties and forfeitures, as the words are used in this exemption, are penalties and forfeitures imposed upon an offender as part of the punishment of his crime (citing cases). *** The legislature cannot have believed that in the interpretation of a grant of amnesty exemption from penalties and forfeitures would receive a broader meaning. Disbarment, therefore, is not within the range of the exemption."

We therefore submit that this interpretation is well sustained by precedent and reason and provides the Petitioner with sufficient protection consistent with his privilege against self-incrimination.

Petitioner in his brief further cites a line of criminal cases, i.e., *Boyd* v. *United States,* 116 U.S. 616, and *One 1958 Plymouth Sedan* v. *Pennsylvania,* 380 U.S. 693, to support his contention that this immunity should be extended to disciplinary proceedings. We submit that the cases cited are criminal in nature and are easily distinguished.

The Fifth Amendment privilege relates to self-incrimination on charges of crime and by invoking this privilege the disclosures asked of a witness must expose him to punishment for crime (see *Zuckerman* v. *Greason,* 20 N.Y. 2d 430, cert. denied 88 S.Ct. 856). These disciplinary proceedings for professional misconduct are civil in nature and do not expose the Petitioner herein to punishment for

crime. They do, however, expose Petitioner to discipline for professional misconduct, which procedures are necessary to insure the orderly administration of justice and are expressly provided for by statute in this State (Judiciary Law, Section 90). This concept of the civil nature of disciplinary proceedings was long ago decided by this Court in *Ex Parte Wall,* 117 U.S. 265. Further, this Court has seen fit to incorporate this concept in its present rules concerning discipline for attorneys admitted to its Bar who have been guilty of professional misconduct (Rules of the Supreme Court of the United States, Revised Rule 8).

Petitioner's reliance on the *Boyd* and *Plymouth Sedan* cases (above cited) is equally misplaced. As this Court noted in Plymouth Sedan, the Boyd situation required a determination that the criminal law had been violated, the forfeiture there sought being authorized as an alternative to imprisonment and/or fine in the same statute. Consequently, if the claimant there were compelled to give testimony he would be asked to provide evidence to establish a violation of what this Court concluded was essentially a criminal statute.

## CONCLUSION

**The peition for writ of certiorari should be denied.**

Respectfully submitted,

Dated: June 24, 1969

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